

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**MARTIN NORIEGA-NAVARRO ,**

**Defendant.**

**CASE NO. 8:09CR212**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Notice of Appeal (Filing No. 130) and the Clerk's memorandum regarding in forma pauperis status (Filing No. 131). A motion for a certificate of appealability was not filed. The Defendant appeals from the Order (Filing No. 128) denying reconsideration of his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion"). The Notice of Appeal will be also considered as a request for a certificate for appealability.

Before the Defendant may appeal the denial of his § 2255 motion, a “Certificate of Appealability” must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (“AEDPA”), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

□ □ □ □

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

The issues raised in the § 2255 motion were carefully considered. For the reasons set forth in the Court’s previously issued Memorandum and Order (Filing No. 128) denying the Defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. The Defendant's request for a certificate of appealability is denied;
2. The Defendant is not allowed to proceed in forma pauperis; and
3. The Clerk is directed to mail a copy of this Order to the Defendant at his last known address.

DATED this 23<sup>rd</sup> day of January, 2013.

BY THE COURT

s/Laurie Smith Camp  
Chief United States District Judge